Supreme Court, U.S.
FILED
OCT 23 2000
CLERK

(3)

No. 99-2059

In The

Supreme Court of the United States

JOE WALLACE, doing business as Video Liquidators,
Petitioner,

v.

MICHAEL E. WELLBORN, Judge, County Court at Law Judge; LISA SHEPPARD, Department Public Safety Agent; DANNY CONTRERAS, Department Public Safety Agent; SAN PATRICIO COUNTY; DAVID H. AKEN, JR., San Patricio County Attorney,
Respondents.

On Petition For Writ of Certiorari To The Court of Appeals For The Fifth Circuit

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REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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7 pp

QUESTION PRESENTED

Whether the bald assertion of "evidence gathering for criminal prosecution" by police officers relieves the courts of their responsibility to enforce the well-settled law against mass seizures of presumptively protected speech material without inquiry into whether the facts support a claim that the mass seizure was to censor free speech.

REPLY TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

COMES NOW Petitioner Joe Wallace to file his Reply to Respondents' Brief in Opposition to Petition for Writ of Certiorari, on issues of:

Petitioner does not concede that the mass seizure was for the purpose of preserving the material as evidence in a criminal prosecution. The seizure was for the purpose of censorship. All copies of the Petitioner's movies, including multiple copies of same, and magazines did not have to be preserved for evidence. One copy is sufficient. The 2,143 copies were never used as evidence or otherwise in the criminal case.

Respondent misstates relevant uncontested facts in this case. Petitioner's civil suit against Respondent began *before* the return of the alleged obscene material and *during* the course of the criminal cases. Petitioner was *not* afforded a prompt adversarial hearing.

OBFUSCATION

The Brief in Opposition obfuscates the question presented by assuming police saying, "the mass seizures were for evidence gathering in a criminal prosecution" makes it so. The facts belie that premise. The mass seizures were for the purpose of seizing every adult movie in town (over 10 thousand movies in all four businesses) thus censoring all such material without a finding of obscenity before, during or ever after the mass seizure.

The Brief in opposition ducks the issue of the court's responsibility when the facts belie the government's stated excuse for the mass seizure of free speech material.

FACTUAL MISSTATEMENTS

1. "Following his arrest, Wallace exercised his right to a prompt Judicial determination of the obscenity issue, demanding the return of the seized property." (Brief in Opposition p. 2)

Wallace did make such demand promptly but no Judicial determination of *any* of the seized materials was *ever* afforded to Wallace, the movies or the public. Not one of the thousands of

seized movies was used in a criminal prosecution. Only two movies *purchased* before the mass seizure were used respectively in two criminal trials.

Of the 10,000 plus movies seized, only 2,134 were returned over two years later.

2. "Following his acquittal, each of the items which had been held as evidence in his criminal prosecutions were returned to Wallace.

"Wallace thereafter filed suit ... " (Brief in Opposition p. 3)

Long after acquittal, only on the eve of the two-year statute of limitations running, did Wallace file this suit and only *after* suit was filed were his seized movies returned (i.e. over two years after the mass seizure).

Note: the businesses that did not sue never got a determination of obscenity or the return of their 8,000 seized movies.

3. "Wallace acknowledges that he was provided an adversarial hearing on the obscenity issue following the seizure in this case, " (Brief in Opposition p. 5)

Nothing is further from the truth. Not one of the *seized* movies has been provided such a hearing. The two criminal trials only addressed two movies *purchased* prior to the mass seizure. Even though the *purchased* movies were not found obscene, the mass seized materials were held until this federal lawsuit secured their return years later. There was no criminal prosecution related to any of the seized movies.

CONCLUSION

The court has well established tests to determine when a mass seizure of speech material is done for the purpose of censorship rather than the stated excuse used by the government. The question presented by petitioner is:

> "Whether the bald assertion of 'evidence gathering for criminal prosecution' by police officers relieves the courts of their responsibility to enforce

> the well-settled law against mass seizures of presumptively protected speech material without inquiry into whether the facts support a claim the mass seizure was to censor free speech."

Though the Brief in Opposition does not address the question, it seems to be important because of the ongoing conflicts among the circuits and the lateral conflicts with the holdings of this Court. (See Petition for Writ of Certiorari "Reasons for Granting the Writ pp. 5-11)

The petition for writ of certiorari should be granted.

Respectfully Submitted,

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